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8  
9 IN THE UNITED STATES DISTRICT COURT  
10 FOR THE DISTRICT OF NEVADA  
11

12 **UNITED STATES OF AMERICA;**

13 Plaintiff,

14 **WALKER RIVER PAIUTE TRIBE,**

15 Plaintiff-Intervenor,  
16

17 **v.**

18 **WALKER RIVER IRRIGATION**  
19 **DISTRICT, et al.,**

20 Defendants.

Case No. 3:73-cv-00127-MMD-WGC

**ANSWER OF CALIFORNIA STATE  
AGENCIES TO SECOND AMENDED  
COUNTERCLAIM OF THE WALKER  
RIVER PAIUTE TRIBE**

21  
22 Counter-defendants California State Water Resources Control Board, California  
23 Department of Fish and Wildlife, and California Department of Parks and Recreation (California  
24 State Agencies), in compliance with the Stipulated Scheduling Order and Discovery Plan dated  
25 March 7, 2019, (ECF No. 2437), hereby answer the Second Amended Counterclaim of the  
26 Walker River Paiute Tribe filed herein on May 3, 2019, (Second Amended Counterclaim) as  
27 follows:  
28

1           1.       Answering paragraph 1, California State Agencies lack knowledge or information  
2 sufficient to form a belief about the truth of the allegations.

3           2.       Answering paragraph 2, California State Agencies lack knowledge or information  
4 sufficient to form a belief about the truth of the allegations.

5           3.       Answering paragraph 3, California State Agencies lack knowledge or information  
6 sufficient to form a belief about the truth of the allegations.

7           4.       Answering paragraph 4, California State Agencies admit paragraph XIV of the  
8 Final Decree states “The Court retains jurisdiction of this cause for the purpose of changing the  
9 duty of water or for correcting or modifying this decree; also for regulatory purposes, including a  
10 change of the place of use of any water user . . . .” California State Agencies deny this Court has  
11 jurisdiction to the extent any claim in the Second Amended Counterclaim raises a controversy  
12 between the State of California and the State of Nevada over apportionment of the interstate  
13 waters of the Walker River basin. Except as so admitted and denied, California State Agencies  
14 lack knowledge or information sufficient to form a belief about the truth of the allegations.

15          5.       Answering paragraph 5, California State Agencies lack knowledge or information  
16 sufficient to form a belief about the truth of the allegations.

17          6.       Answering paragraph 6, California State Agencies lack knowledge or information  
18 sufficient to form a belief about the truth of the allegations.

19          7.       Answering paragraph 7, California State Agencies lack knowledge or information  
20 sufficient to form a belief about the truth of the allegations.

21          8.       Answering paragraph 8, California State Agencies lack knowledge or information  
22 sufficient to form a belief about the truth of the allegations.

23          9.       Answering paragraph 9, California State Agencies admit that in 1924, the United  
24 States filed suit in the District of Nevada to establish water rights for the Reservation. Except as  
25 so admitted, California State Agencies lack knowledge or information sufficient to form a belief  
26 about the truth of the allegations.

27          10.      Answering paragraph 10, California State Agencies admit the Final Decree states  
28 the United States of America is “adjudged and decreed to be the owner of the right to divert a

1 continuous flow of 26.25 cubic feet per second of the natural flow of the Walker River to be  
2 diverted from said stream upon or above the Walker River Indian Reservation during the  
3 irrigation season of 180 days of each year for the irrigation of 2100 acres of land situated in the  
4 Walker River Indian Reservation, . . . with a priority of November 29, 1859.” Except as so  
5 admitted, California State Agencies lack knowledge or information sufficient to form a belief  
6 about the truth of the allegations.

7 11. Answering paragraph 11, California State Agencies lack knowledge or information  
8 sufficient to form a belief about the truth of the allegations.

9 12. Answering paragraph 10, California State Agencies lack knowledge or information  
10 sufficient to form a belief about the truth of the allegations.

11 13. Answering paragraph 13, California State Agencies lack knowledge or information  
12 sufficient to form a belief about the truth of the allegations.

13 14. Answering paragraph 14, California State Agencies lack knowledge or information  
14 sufficient to form a belief about the truth of the allegations.

15 15. Answering paragraph 15, California State Agencies lack knowledge or information  
16 sufficient to form a belief about the truth of the allegations.

17 16. Answering paragraph 16, California State Agencies admit paragraph XIV of the  
18 Final Decree states that “The Court retains jurisdiction of this cause for the purpose of . . .  
19 modifying this decree . . . .” Except as so admitted, California State Agencies lack knowledge or  
20 information sufficient to form a belief about the truth of the allegations.

21 17. Answering paragraph 17, California State Agencies incorporate by reference their  
22 responses to paragraphs 1 through 16.

23 18. Answering paragraph 18, California State Agencies lack knowledge or information  
24 sufficient to form a belief about the truth of the allegations.

25 19. Answering paragraph 19, California State Agencies lack knowledge or information  
26 sufficient to form a belief about the truth of the allegations.

27 20. Answering paragraph 20, California State Agencies incorporate by reference their  
28 responses to paragraphs 1 through 19.

21. Answering paragraph 21, California State Agencies lack knowledge or information sufficient to form a belief about the truth of the allegations.

22. Answering paragraph 22, California State Agencies lack knowledge or information sufficient to form a belief about the truth of the allegations.

23. Answering paragraph 23, California State Agencies lack knowledge or information sufficient to form a belief about the truth of the allegations.

24. Answering paragraph 24, California State Agencies incorporate by reference their responses to paragraphs 1 through 23.

25. Answering paragraph 25, California State Agencies lack knowledge or information sufficient to form a belief about the truth of the allegations.

26. Answering paragraph 26, California State Agencies lack knowledge or information sufficient to form a belief about the truth of the allegations.

27. Answering paragraph 27, California State Agencies lack knowledge or information sufficient to form a belief about the truth of the allegations.

## **AFFIRMATIVE DEFENSES**

### **First Affirmative Defense**

The doctrine of res judicata, claim preclusion, issue preclusion, and/or other principles of finality bar the re-adjudication of water rights adjudicated in the Walker River Decree.

### **Second Affirmative Defense**

The Second Amended Counterclaim fails to join necessary and indispensable parties.

### **Third Affirmative Defense**

The Second Amended Counterclaim and every claim for relief stated therein is barred by the doctrine of laches.

### **Fourth Affirmative Defense**

The Second Amended Counterclaim and every claim for relief stated therein is barred by the doctrine of estoppel.

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**Fifth Affirmative Defense**

The Second Amended Counterclaim and every claim for relief stated therein has been waived.

WHEREFORE, California State Agencies pray for judgment as follows:

1. That the Walker River Paiute Tribe and its members are entitled to no relief to the extent such relief would: (a) reduce or interfere with any water rights held by California State Agencies, (b) interfere with California State Agencies' jurisdiction and/or regulatory authority, (c) adversely impact California's public trust resources or result in the waste or unreasonable use of California's water resources, (d) conflict with water rights that were fully adjudicated in the Walker River Decree, and (e) conflict with California law;

2. For their costs of suit; and

3. For such other and further relief as the Court deems just and proper.

Dated: August 1, 2019

Respectfully submitted,

XAVIER BECERRA  
Attorney General of California

/s/ Nhu Q. Nguyen

NHU Q. NGUYEN  
Deputy Attorney General  
*Attorneys for California State Agencies*

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**DECLARATION OF SERVICE BY CM/ECF**

Case Name: *United States of America; Walker River Paiute Tribe v. Walker River Irrigation District*

Case No. **3:73-cv-00127-MMD-WGC**

Pursuant to Federal Rule of Civil Procedure, rule 5(b), I certify that on this date I caused the foregoing document, entitled **ANSWER OF CALIFORNIA STATE AGENCIES TO SECOND AMENDED COUNTERCLAIM OF THE WALKER RIVER PAIUTE TRIBE**, to be filed electronically with the Clerk of the Court using the CM/ECF system.

This filing is only being served via CM/ECF and is not subject to the postcard notice requirement provided for in Paragraph 17.c of the October 17, 2014 Superseding Order Regarding Service (Document No. 2100) and pursuant to Federal Rule of Civil Procedure, rule 5(a)(1)(E) and (b)(3), and Local Rule 5-4.

Dated: August 1, 2019

/s/ Leticia Aguirre  
Leticia Aguirre